

EXHIBIT B

**REPORT ON THE HIRING OF MEN
BY LA WEIGHT LOSS CENTERS, INC.**

**Elvira Sisolak
Senior Economist**

**Research and Analytic Services
Office of General Counsel**

**Equal Employment Opportunity Commission
Washington, D.C.**

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Introduction

I, Elvira Sisolak, am a Senior Economist in the Research and Analytic Services unit of the Office of General Counsel, EEOC. As a labor economist, I provide analytical support and expert testimony for charges and cases of employment discrimination. I graduated with a B.A. in economics from the University of Massachusetts and received a M.A. in economics from George Washington University.

During the 32 years I have worked for EEOC, I have prepared many analyses and reports on the economic aspects of employment discrimination. My work incorporates my knowledge of the dynamics of labor markets, particularly trends in employment and unemployment. I am responsible for developing techniques and approaches required for my analyses, and gathering, processing, and evaluating data needed to complete the task. I routinely use statistical analyses and computers to help me in my work. A copy of my resume, which includes an explanation of my compensation from EEOC, and a listing of my deposition and trial testimony are attached as Appendix A to this report.

In this report, I will present an analysis of the hiring activities of LA Weight Loss Centers, Inc. (hereafter, LA Weight Loss) to determine if their hiring of men corresponded to the availability of men for such employment. First, I will discuss the types of persons LA Weight Loss sought for the five positions that involve contact with the clients and supervision of those who deal with clients -- Counselors, Medical Assistants, Assistant Managers, Managers, and Area Supervisors.¹ I will then analyze available information about persons applying for these jobs. I will also discuss relevant data from the general labor market, relying on Census data. Generally, applications represent the best source of information about persons interested in a particular job, unless they are incomplete or inaccurate.

Next, I will analyze data provided by LA Weight Loss describing the reasons that specific applicants were not hired by the company. Finally, I will review data that follows individuals through the various stages of the hiring process to determine if men were eliminated disproportionately at any stage.

Throughout the report, I will conduct statistical tests to show the likelihood of the occurrence of the differences between the expected and actual number of men. From the test results, I will determine whether these differences can be explained by chance. If chance cannot explain the differences, then the analyses have yielded a result called statistical significance that has been found by the courts and EEOC to be an indication of employment discrimination.

To complete my work on this case, I reviewed numerous documents and computer files received by EEOC during the administrative portion of this case and during litigation. A description of these items is included in Appendix B. Also in the appendix are descriptions of the electronic files prepared by EEOC from documents produced by LA Weight Loss.

¹ LA Weight Loss hires small numbers of persons for a wide variety of other jobs, few of which involve contact with customers. Some of these jobs, such as Trainer, are important positions but are not included in this analysis because of the relatively small number of hires.

Job Requirements

In its publication “Guide to Selecting the Best” LA Weight Loss gives instructions to managers in recruiting and hiring employees. The document contains 43 pages, including specific information such as job descriptions and a list of industries and companies within those industries that are viewed by management as good recruitment sources.

The position descriptions for Sales Counselors and Medical Technicians on pages 16-17 state that the principal duties and responsibilities of both positions are service, sales, and operations. The service component involves counseling clients on a one-to-one basis to ensure safe and healthy weight loss and possessing a thorough knowledge of the company’s programs and products. The sales aspect involves selling the products and services to meet the goals and quotas of the Centers. And operations includes attending staff meetings, helping to maintain the appearance of the Center, and a general need to perform tasks that ensure efficient center operations and compliance with company and government requirements.

In addition, the Medical Technicians must be certified in phlebotomy or venipuncture and have at least six months of clinical experience. Other requirements including being alert to the appointment schedule for lab work and knowing about the OSHA requirements for safely drawing blood. The Medical Technicians must also draw blood from clients, prepare the blood to be sent to the lab, and maintain a clean, disinfected lab area.

Other essential requirements for both jobs include physical requirements (standing or sitting for long periods of time, lifting up to 50 pounds) and being willing to work a flexible schedule of various days and hours.

The job descriptions for Counselor and Medical Technician do not include any specific education or experience requirements. However, the list titled “Where to Recruit & Scout New Employees” (pps. 5-8) shows 26 industries that span an extensive portion of the retail sector and a number of personal and financial services activities that can be sources of “the ideal employee.” The complete list is shown in the following table:

Table 1. List of Recruitment Sources

Accessories & Apparel	Personal Services
Airlines	Jewelry – Retail
Auto	Lingerie/Body
Cosmetics, Skin Care & Fragrance	Optical
Dating Services	Restaurant/Dining
Department Stores	Retail
Educational Services	Shoes
Financial Services & Mortgage Lending	Social Services
Fitness	Sunglasses & Accessories – Retail
Furniture	Travel
Home Décor & Candles/Scented Oils	Vitamins/Supplements
Home Improvement	Weight Loss
Hotel	Wireless/Communication

The descriptions accompanying the list of industries emphasize the customer service and satisfaction aspects of jobs in these industries. Many also mention performance-based compensation; others mention excellent training of employees.

The very general nature of the Counselor job description, plus the lack of specific education or experience requirements for successful applicants and the very large range of industries suggested as recruitment sources for employees yields the conclusion that a very broad range of persons with sales experience are good candidates for these jobs. Other customer-service jobs that do not include selling, such as airline flight attendant and social services worker, are also listed among the good candidates.

The following table shows data from the 2000 Census on sales workers in the full range of retail sales industries in the United States. This table does not include cashiers, counter or rental clerks, or telemarketers.

Table 2. Sales Workers in Retail Trade Industries

	Total	Men	Percent Men
Building Material & Garden Equipment & Supplies Dealers	320,268	247,348	77.2
Camera, Photographic Supplies, Sporting Goods, Hobby, Book, and Music Stores	263,739	138,039	52.3
Clothing & Clothing Accessory Stores	452,619	119,685	26.4
Electronics & Appliance Stores, except Camera and Photographic Supplies	233,494	171,710	73.5
Furniture & Home Furnishing Stores	182,478	90,434	49.6
General Merchandise Stores	671,742	167,024	24.9
Health & Personal Care Stores	160,260	38,910	24.3
Motor Vehicle & Parts Dealers	470,304	419,995	89.3
Miscellaneous Store Retailers	338,878	124,038	36.6
Nonstore Retailers & Not Specified Retail Trade	249,919	126,084	12.0
Total	3,343,701	1,643,267	49.1

Clearly, large numbers of men work as sales workers in all the above industries. The proportion of men ranges from a high of 89.3 percent as sales workers for motor vehicle and parts dealers to a low of 12.0 percent for nonstore retailers and no specified retail trade, the only one of the categories that does not represent primarily face-to-face contact with customers. The average for all the industries is 49.1 percent.

Men are also represented in large numbers in the non-retail industries mentioned in Table 1 as good sources of effective employees.² The occupational groups included in the following table

² Industry data for social services, travel, and weight loss is not specifically available. For information on these workers, see Table 4, which shows data by occupational group. Neither industry data nor occupational data is available for employees of dating services.

are those that represent customer-contact jobs, such as food servers, personal financial advisors, hairdressers, and flight attendants.

Table 3. Workers in Customer Contact Jobs in Selected Industries

	Total	Men	Percent Men
Accommodation	130,474	59,689	45.7
Air Transportation	111,837	23,032	20.6
Banking, Credit & Related Activities	306,151	143,498	46.9
Food Services & Drinking Places	1,868,433	505,146	27.0
Personal & Laundry Services	756,735	141,361	18.7
Securities, Commodities, Funds, Trusts & Other Financial Investments & Related	154,513	116,954	75.7
Total	3,328,143	989,680	29.7

Combining the data from Table 2 and Table 3 yields a total of 6.7 million workers, almost 2.6 million of whom are men (39.5 percent).

When analyzed from the viewpoint of occupational groups across all industries, men are also well represented. Following are occupational data for those detailed jobs that most closely fit the sales and service jobs in the industries on Table 1.

Table 4. Occupations from Industries in Table 1

	Total	Men	Percent Men
Baggage Porters, Bellhops & Concierges	55,805	46,540	83.4
Bartenders	343,280	159,110	46.3
Counselors	572,195	192,440	33.6
Host & Hostesses, Restaurant, Lounge, & Coffee Shop	212,385	26,974	12.7
Medical Assistants & Other Healthcare Support Occupations	604,220	72,705	12.0
Loan Counselors & Officers	324,470	144,985	44.7
Parts Sales Workers	130,650	117,075	89.6
Personal Financial Advisors	252,755	172,875	68.4
Recreation & Fitness Workers	262,390	94,405	36.0
Retail Sales Workers	3,627,515	1,710,990	47.2
Securities, Commodities, and Financial Services Sales Agents	386,235	262,335	67.9
Social Workers	644,635	138,565	21.5
Transportation Attendants	133,260	28,335	21.3
Travel Agents	143,900	24,345	16.9
Waiters & Waitresses	1,817,895	468,340	25.8
Total	9,511,590	3,600,019	38.5

The detailed occupations of Weight-Reduction Specialist (personal care) and Phlebotomist are included in the Medical Assistant and Other Healthcare Support Occupations job group, along with a long list of medical assistants who work in hospitals, clinics, and doctors' offices. Weight-Reduction Specialists are a small part of this large industry group.

As with the industry data, the proportion of men by occupation ranges from a high of about 89 percent (sales workers of parts) to 12 percent (medical assistant), with most occupations much closer to the middle of the range than the extremes. The average of 38.5 percent is almost identical to the average of 39.5 percent from combining the industries in Tables 2 and 3. Thus, 39 percent is the estimate of the available pool of men for the LA Weight Loss jobs whether an industry standard or an occupational standard is the basis of the estimate.

The representation of men in the job groups listed in Table 4 varies somewhat by geographical area. I reviewed comparable data for New York, Ohio, and Pennsylvania, the three states in which LA Weight Loss hires their largest numbers of employees of the 21 states from which they hire employees. (See following section on LA Weight Loss hiring for additional detail.)

According to the Census data, the representation of men in New York in each of the 15 job groups is higher than the national average, but in Ohio men exceed the national average in only four of the 15 groups and in Pennsylvania in five of the 15. However, the proportion of men in the three areas exceeds the national average in 24 of 45 instances, or 53.3 percent of the total. Therefore, reliance on the national average is reasonable as an overall indicator of the pool of men available for jobs at LA Weight Loss.

Finally, men are also well-represented in managerial positions in the US, accounting for 61.4 percent of all Official and Managers. Assistant managers and Managers at LA Weight Loss conform most closely to the occupational group First-Line Supervisors/Managers of Retail Sales Workers, a large occupational group that is 58.2 percent male. Area Supervisors are Marketing and Sales Managers, another large group with a very similar proportion of men (57.8 percent).

Table 5. Managerial Occupations

	Total	Men	Percent Men
All Officials and Managers	15,344,495	9,417,420	61.4
First-Line Supervisors/Managers of Retail Sales Workers	2,829,820	1,646,785	58.2
Marketing and Sales Managers	1,081,440	618,785	57.2

When questioned in deposition about recruiting activities, LA Weight Loss managers gave a variety of responses to questions about their reliance on the recruiting methods such as those described in "Guide to Selecting the Best." For example, Elaine Bussoletti, who was hired in 1996 as a Counselor and very quickly promoted to Assistant Manager and then Manager and is now the Chief Operating Officer of LA Weight Loss, was asked about qualifications for hires for the counselor position. She mentioned a number of subjective criteria, such as the need to be a "caring person" and communications skill. Discussing sales ability, she said:

(At) different periods in our history we've concentrated on different things. I mean there was a point in time where we said if a person be it a counselor or anybody didn't have sales experience then they probably wouldn't qualify for it. But we've realized that that maybe closed us off from people. Or maybe we got

shark salespeople who didn't care about the client because we're about service and retention too, so it shifted. So we looked for more sales experience in the assistants than we would necessarily in the counselor or more selling ability.

When asked when this shift occurred, Ms. Bussoletti said she did not know but that the requirement of prior sales experience or no such experience requirement shifted several times over the years (Nov. 19, 2004, pps. 146-148).

Eileen Stankunas, who was hired by LA Weight Loss as a manager in 1992 and terminated her employment in 2002, when asked if it was a requirement that a person hired as a Counselor have prior work experience as a salesperson responded that it desirable but not mandatory. During the discussion, she stated that waiters/waitresses were sales workers in her mind. She further stated that there was no requirement that a successful applicant have prior commission sales experience. She mentioned that "intangible sales" experience was important, but when asked for examples of such experience, could think only of weight loss and "hypnosis." (Dec. 6, 2004, pps. 206-209.)

When asked about the qualifications of a successful applicant, Lesia Petrizio, a Vice President for Operations at LA Weight Loss, testified on Nov. 30, 2004 about the type of person the company hired as Counselors:

A. Well, in the very beginning, when I first started, it was early on and continued into a portion of Eileen's tenure, it was a shark. You wanted a shark. You wanted the people with the teeth who could sell, who could go in there, close that deal and come on out. And then it would go back and forth there for a while from, okay, now we want -- we still want that salesperson, but we want a little bit of a softer salesperson. We don't want the shark with the huge teeth. Maybe the whale that skims. It went back and forth for a very long time after that point. You know, one time it was sharks, the next time it was -- we call them healing Helens. Someone who had salesperson experience, but was a little more not so "salesie." It goes back and forth.

Q. Do you know why it's changing from the sharks to the healing Helens and back and forth?

A. Because we are a service industry. I can sell, and we still want sales, I don't want you to mix up. We still need people who are able to sell and make that emotional connection because you're asking people for money to lose weight, you have to find out why they are there to lose that weight. But we're looking for that total package now, not only someone who can sell well, but who could service the sale. Because today's consumer, if you're going to give me \$600, you want service to go along with that. So we're looking for now a more complete package.

Q. Someone who is going to keep them coming back?

A. Yeah, servicing them, keep them happy, keep them motivated, keep them losing weight.

Q. What does that mean in terms of the qualifications? What does that mean in terms of the job experience that you're looking for? Has that transition from just the shark to someone who is going to give them more service and keep them coming back, has that changed the type of experience that the company is looking for, in your experience?

A. I think in the early days, we were more narrow thinking as far as -- you know, because we just wanted salespeople. And now that we've kind of broadened our -- or want that total complete package, I think, you know, we look at many different aspects. Like I said to you before, the, you know, health clubs and dating services and cosmetics and lingerie and those types of industries. I think we've broadened ourselves versus, you know, just looking for somebody who sold just intangibles. Because then it was all about the sale, that emotional connection to make that sale. Now you still have to have the sales, the emotional connection to make the sales, but you also have to be able to service that sale.

(pps. 121-124)

Christiane Burnard, the Senior Vice President of Operations, said that the company reviewed the backgrounds of their employees to see who had moved through the ranks and who had stayed with the company. They concluded that the emphasis on a sales background did not necessarily yield the most successful employees. (Apr. 1, 2005, p. 182, Line 19 through p. 186, Line 23).

Ms. Petrizio further said that the company had never told her that she could not hire a person without a high school diploma nor was a diploma a factor in her hiring decision. When asked later if a successful candidate for a Counselor position had to have experience in one of the industries she had mentioned earlier, she said, "No. Absolutely not." (pps. 196, 198.)

The testimony of these three managers clearly indicates that there were no firm requirements -- neither prior work experience nor education -- for the position of Counselor. This almost complete lack of objective criteria yields the conclusion that subjective criteria were overwhelmingly important in the hiring of Counselors.

When discussing qualifications for the Assistant Manager position, Ms. Burnard said that LA Weight Loss looks for much the same background as for Counselors, "...inner personal energy and excitement but I would like to see at least some sort of commission sales as well as management of one or more people." But she then said that commission sales experience was not required. (p. 194, Line 20-p. 195, Line 16.) For Center Manager, Ms. Burnard said that demonstrated leadership ability was required, reflected mainly through past experience. (p. 200, Line 13 through p. 201, Line 21.) For an Area Supervisor, LA Weight Loss looks for persons with multi-unit experience (p. 214, Lines 8-17), although many Area Supervisor positions are filled by promoting LA Weight Loss Employees.

Hires

According to a payroll computer file produced by LA Weight Loss, the company hired 6,637 persons as Counselors, Medical Assistants, Assistant Managers, Center Managers, and Area Supervisors during the period from January 2002 through February 2005. Most of the hires were Counselors; about one in six hires was an Assistant Manager and the same one in six was a Manager. One man was among the 54 employees hired as Area Supervisors. As shown in Table 6, below, the relative number of men hired in all positions was very small.³ The proportion of hires who were men was about two percent in all categories.

³ The computer file containing employee data appears to misidentify the gender of at least 50 employees. A check of the original documents prepared by more than 30 of these employees at their time of hire indicates that these employees' genders – both female and male – in almost all instances are incorrect on the file and are, in fact, the genders that would be expected based on their very common first names. The exceptions are a female employee whose first name was Brandon and whose nickname was Brandi and an employee whose first name was John who checked the box for female gender. The misidentification seems to have more frequently affected men who were erroneously classified as women, but the numbers are small in comparison to the large number of hires. One misidentification merited change in the data base: George Reitz, who was hired as an Area Supervisor in 2002. According to the computer file, he is female, but deposition testimony and his New Hire Personnel Information form indicate that he is male. Since he was apparently the only man hired into this position, I have included him in Tables 6 -9. Because it is impossible to determine exactly how many employees were misidentified in other positions by LA Weight Loss, no other changes were made in the data base used in this report. The number of misidentified employees would not have a major effect on the conclusions of this report.

Table 6. Hires at LA Weight Loss – January 2002-February 2005 – from Payroll File

	Total	Women	Men	Percent Men
Counselors	3,765	3,692	73	1.9
Medical Assistants	592	580	12	2.0
Assistant Managers	1,091	1,069	22	2.0
Managers	1,135	1,116	19	1.7
Area Supervisors	54	53	1	1.9
Total	6,637	6,510	127	1.9

As shown in the following table, the proportion of men hired into the five job groups varied only slightly by year.

Table 7. Hires into Five Job Groups by Year – January 2002-February 2005 – from Payroll File

	Total	Women	Men	Percent Men
2002	2,046	2,004	42	2.1
2003	2,149	2,092	57	2.7
2004	2,125	2,099	26	1.2
January-February 2005	317	315	2	0.6

The slight rise in the proportion of men hired in 2003 was wholly due to the increase in the number of men hired as Medical Assistants, Assistant Managers, and Managers. LA Weight Loss hired one more man as a Counselor in 2002 than in 2003.

Over the entire period, LA Weight Loss hired employees in 21 States and the District of Columbia. The largest numbers were hired in New York (1,014), Pennsylvania (944), and Ohio (634). Between 400 and 500 persons were hired in each of five other States -- Florida, Illinois, Massachusetts, New Jersey, and Texas. Hiring for the company was concentrated in the Northeast, North Central, and Midwest States. They did not hire any persons in the South or Southwest except in Florida and Texas, nor in the West except in California and Washington.

The 6,637 employees were assigned initially to about 350 LA Weight Loss Centers during the three-year and two-month period. Only four Centers hired more than two men.. Kent, Washington, Salem, Ohio, and Utica, New York each hired three men and Bedford Heights, Ohio hired four.

Another source of information on hires is the personnel files that were given to EEOC by LA Weight Loss. EEOC had data key-entered from the files. There were 5,445 employees for whom job title at time of hire was available and who were hired from 1999-2004. As with the data from the payroll file, most of the employees were hired into Counselor positions and almost one in six were hired as Assistant Sales Managers and the same number as Managers. The major difference is that Medical Assistants accounted for 12 percent of the hires according to the personnel files. The distribution of the employees in the five job groups is shown below:

Table 8. Hires at LA Weight Loss – 1999-September 2004 – from Personnel Files

	Total	Women	Men	Percent Men
Counselors	3,141	3,078	63	2.0
Medical Assistants	632	619	13	2.1
Assistant Managers	764	746	18	2.4
Managers	831	814	17	2.0
Area Supervisors	77	76	1	1.3
Total	5,445	5,333	112	2.1

The proportions of men in the five job groups were very similar in the personnel files and the payroll files. Men accounted for 2.1 percent of the employees according to the personnel files, not substantially different from the 1.9 percent derived from the payroll file. The largest proportion of men in any of the five job groups from the personnel files was 2.4 percent of Assistant Managers.

The number and proportion of male employees hired by year varied somewhat more according to the data from the personnel files than what was seen in the payroll file. The highest proportion of male hires was 3.2 percent in both 2003 and 2004.

Table 9. Hires into Five Job Groups by Year – 1999-2004 – from Personnel Files

	Total	Women	Men	Percent Men
1999	892	868	24	2.7
2000	910	904	6	0.7
2001	1,241	1,228	13	1.0
2002	724	708	16	2.2
2003	1,015	983	32	3.2
2004	663	642	21	3.2

Based on the State of residence of the employees, the hiring of persons into the five job groups by LA Weight Loss was concentrated in the Northeast, North Central, and Midwest States. In the South, Southwest, and West, the company hired employees only in Florida, Texas, California, and Washington.

These two complementary data sources yield the conclusions for the 1999 to 2004 period that (1) LA Weight Loss hired as many as 2,000 persons per year as Counselors, Medical Assistants, Assistant Managers, Managers, and Area Supervisors, (2) men accounted for about two percent of these hires, and (3) two percent of the Counselors and Managers who were hired were men, as were less than 2.5 percent of Medical Assistants and Assistant Managers and one percent of Area Supervisors. Most of the hiring for LA Weight Loss was in the Northeast, North Central, and Midwest States, plus in Florida and Texas, and none of the 350 LA Weight Loss Centers hired more than a few men during the period from 2002 through early 2005.

Qualifications of Hires

An analysis of the qualifications of the persons hired by LA Weight Loss focused on six types of prior work experience; (1) any prior work experience at a weight loss center that stresses diet as the primary means to weight loss, (2) at least six months of other experience in industries providing fitness services to adults, (3) at least six months of other experience in jobs selling cosmetics, skin care products, or fragrances, (4) at least six months of other work experience in the dating service industry, (5) at least six months of other experience as a sales worker who actively sells to customers, and (6) at least six months of other experience as a waiter or other food/beverage server who is not similar to a cashier. Experience in any job was included in only one of the six categories and the employees were placed in the categories in the order shown. Thus, employees were placed in the general sales worker category only if they had sales experience that was not in one of the first four categories list above.

A total of 15,787 employee files were reviewed to determine the employees' prior work experience. Over 9,500 employee files (61 percent) did not contain an application or resume that would allow this evaluation to be performed. Slightly more than half of the remaining 6,220 employees had no prior work experience in any of the six categories. All but 660 of the remaining 2,968 employees had work experience in only one of the six categories. The one job held by most of the employees (59 percent) was that of sales worker who actively sold to customers. The other jobs were fairly evenly divided among servers (14 percent), weight loss centers (11 percent), cosmetics/skin care/fragrances (8 percent), and fitness centers (8 percent). Only 10 employees (0.4 percent) had experience in the dating services industry.

For those 660 employees who had experience in more than one of the six categories, the vast majority had experience in two industries and the pattern of their experience was similar to that of employees with experience in only one category. The most common combination for the multi-category employees was active sales work (85 percent of the employees) and some other category. The 660 employees also had work experience in cosmetics/skin care/fragrances (39 percent), weight loss centers (32 percent), server (29 percent), and fitness (22 percent). Only 2 percent had experience in the dating industry.

This analysis indicates that about half of the employees hired by LA Weight Loss did not have any experience in the industries or occupations mentioned most often in the company's hiring materials and by the hiring officials as producing effective LA Weight Loss employees. Of those employees who had experience in one of the six categories, the majority did not have experience in any of the specific industries/occupations mentioned by LA Weight Loss; their experience was in sales jobs other than weight loss, servers, fitness, cosmetics/skin care/fragrances, and the dating industry. Of those who had the specific industry/occupation experience, such experience was fairly evenly divided among weight loss, servers, fitness, and cosmetics/skin care/fragrances. Almost no employees had experience in the dating industry.

Applicants

EEOC obtained information from 73,300 applications and resumes of unsuccessful applicants to LA Weight Loss.⁴ I was able to identify the gender of 69,000 of these applicants or 94 percent of the total. I relied on the following means of determining sex: (1) general knowledge of very common names, such as John and Mary, (2) a list of 40,000 names based on records of the Social Security Administration, which linked first names and sex, (3) names that were phonetically identical to others that had previously been identified by sex, and (4) names ending in letters or groups of letters that are typically associated with one sex (see Appendix B).

Twenty-four percent of the 69,000 applicants were men. Since many of the applicants submitted resumes rather than applications, a substantial number were missing application dates and a much larger number did not specify a job-applied-for. The largest numbers of applications were filed between 2000 and 2003, with these four years accounting for 75 percent of the applications. The proportion of male applicants in those years varied very slightly, from 23 percent to 26 percent.

Forty-three percent of the unsuccessful applicants provided at least one job-applied-for that could be categorized into one of the five jobs included in this analysis. Men accounted for 24 percent of these applicants, the same as for all the unsuccessful applicants. The distribution of men and women in the five jobs is shown below:

Table 10. Job-Applied-For of Unsuccessful Applicants

	Total	Women	Men	Percent Men
Counselors	14,456	11,232	3,224	22.3
Medical Assistants	5,502	4,808	694	12.6
Assistant Managers	3,513	2,428	1,085	30.9
Managers	4,881	3,118	1,763	36.1
Area Supervisors	1,390	904	486	35.0
Total	29,742	22,490	7,252	24.4

In categorizing the job-applied-for, I classified persons as applying for Medical Assistant somewhat differently than other positions. Because this job has a specific requirement of certification as a phlebotomist, I categorized as Medical Assistants all persons who listed that job or any of its variations as any of the jobs they were applying for. For other positions, I categorized persons by the first job they applied for. The proportion of men who applied for Medical Assistant positions was substantially lower than the proportion applying for the four

⁴ The applications and resumes made available to EEOC do not include all those received by LA Weight Loss during the relevant period. Karen Siegel said that LA Weight Loss received only a portion of applications of persons who applied to HotJobs for Counselor positions (Siegel, 11/4/2004; p. 201-207). For at least some part of the period from 2000 through early 2005, applications were reviewed online and only those of interest were printed and eventually produced to EEOC. Thus, some unknown number of applicants in this analysis had been selected for further review because of their qualifications. Others who were considered to be less well-qualified are not included in this analysis.

other jobs. A comparison of the unsuccessful applicants with the hires from the payroll computer file yields the following:

Table 11. Unsuccessful Applicants and Hires from the Payroll File

	Unsuccessful Applicants		Hires		Total Applicants	
	Total	% Men	Total	% Men	Total	% Men
Counselors	14,456	22.3	3,765	1.9	18,221	18.1
Medical Assistants	5,502	12.6	592	2.0	6,094	11.6
Assistant Managers	3,513	30.9	1,091	2.0	4,604	24.0
Managers	4,881	36.1	1,135	1.7	6,016	29.6
Area Supervisors	1,390	35.0	54	1.9	1,444	33.7
Total	29,742	24.4	6,637	1.9	36,379	20.3

The patterns shown for the male applicant rates among all applicants are very similar to those of unsuccessful applicants, only slightly lower. I used a statistical test called the Fisher's Exact Test to determine if there are statistically significant differences between the applicant and hire data for men and women. For each job and overall, the tests yield the consistent conclusion that men are selected at lower rates than expected and that the differences are statistically significant. The probabilities of such results are all far below the upper cutoff score of .05. (See Appendix C for a list of all probabilities resulting from statistical tests prepared for this report.) These results are also equal to a number of standard deviations substantially greater than two, the usual upper cutoff score applied by many courts in employment discrimination cases.⁵ The conclusion from these statistical tests is that the differences between the hiring rates and application rates of men in all five jobs and each of the five jobs could not be expected to occur by chance.

Substituting hires from the personnel files for hires from the payroll file yields the same statistical results. That is, for each job and overall, men are selected at lower rates than expected and the differences are statistically significant at a level below .05. Also in each instance, the number of standard deviations is greater than two. These differences also could not be expected to occur by chance.

Applicants Not Hired

LA Weight Loss provided an ACCESS data base containing information about applicants in 2004 and 2005. The file contained a total of 27,369 applicants who were assigned 28,457 reasons for not being hired, as shown below.

⁵ The proportions of male applicants from the applicant data can also be analyzed as estimates of the availability of men for these jobs. The statistical tests that result from comparing the proportions to the actual hiring also yield statistically significant results.

Table 12. Reasons for Non-Hire of Applicants

Reasons	Number	Percent of Total
Relevant Experience	19,663	69.1
Personality\Cultural Fit	2,393	8.5
Not Interested	1,828	6.4
Salary	1,248	4.4
Scheduling\Hours	1,020	3.6
Information Submitted	503	1.8
No Openings	419	1.5
Commute	375	1.3
Professionalism	282	1.0
Communication	235	.8
Job-Hopping\Gaps	200	.7
Not Bi-Lingual	50	.2
Age Requirements	19	.0
Professional Appearance	11	.0
Other	211	.7
Total	28,457	100.0

Almost 70 percent were not hired because they did not have relevant experience. The next largest category, Personality/Culture Fit, accounted for 8.5 percent of persons not hired. In total, almost 85 percent of the applicants were rejected by LA Weight Loss. But only 200 applicants, or less than one percent, were not hired because of frequent job-hopping or gaps in employment, one of the reasons for non-hire cited often by management employees.

A total of 15.7 percent of the applicants who were not hired removed themselves from consideration after applying to LA Weight Loss. They were in the categories of Not Interested, Salary, Scheduling/Hours, and Commute.

Steps in the Hiring Process

LA Weight Loss provided a computer file in ACCESS format that contained information about hires and rejected applicants for the last quarter of 2004 and most of 2005. There were 54,929 persons on the file. Just over 42 percent or 23,101 persons on the computer file were gender-identified and had at least one entry about the specific status of their application, with men accounting for 18.9 percent of this total, somewhat below the 24.4 percent shown on the applicant data on Table 10. Applicants had up to five entries regarding their applications. I placed each applicant at the highest single point reached in the selection process. The highest possible point was Hired; lowest possible point was Rejected, which included those applicants who were rejected on the basis of their applications or resumes alone and did not advance to telephone pre-screening. The following table shows data for the selection points, beginning with those eliminated before the pre-screening stage.⁶

⁶ Data was provided for applicants rejected before pre-screening, those who passed pre-screening, those who self-selected out, were no longer interested, had a message left for them or did not call back, and the hires. I obtained data for the other groups by subtraction.

Table 13. Steps in the Hiring Process

	Total	Men	Women	Percent Men
Total Applicants	23,101	4,372	18,729	18.9
Rejected Prior to Pre-Screening	12,111	3,503	8,608	28.9
Advanced to Pre-Screening	10,990	869	10,121	7.9
Pre-Screened Rejected	4,798	479	4,319	10.0
Pre-Screened Passed	6,192	390	5,802	6.3
No Longer Interested	824	47	777	5.7
Left Message/No Call Back	4,507	299	4,208	6.6
Interviewed	861	44	817	5.1
Not Selected	475	32	443	6.7
Hired	386	12	374	3.1

This data shows that men were 18.9 percent of the total applicants and 3.1 percent of the persons hired; 0.3 percent of the men who applied were hired, compared with 2.0 percent of the women. The number of men available for hire was substantial throughout the hiring process. Eighty percent of the male applicants were rejected at the initial stage based on their applications/resumes alone compared to 46 percent of women. After that stage, men accounted for 7.9 percent of applicants. Men were also rejected at the pre-screening stage at rates higher than women. At the last stage of the process, men accounted for 5.1 percent of the applicants who were interviewed, but only 3.1 percent of those who were hired.

The Fishers Exact test reveals that male applicants were hired at lower rates than female applicants and that the differences were statistically significant. Men were also rejected based on their applications or resumes, pre-screened from the applicant pool, and not hired after being interviewed at rates higher than those of women. In each instance, the tests yield probabilities substantially below .05 and numbers of standard deviations greater than two. These differences could not be expected to occur by chance. The differences between men and women who were no longer interested after advancing to pre-screening or beyond and those for whom a message was left or did not return a message were not statistically significant. This analysis suggests that men did not remove themselves from the hiring process at any time at rates higher than those of women. However, men were rejected by LA Weight Loss at higher rates at three points in the process and these differences were statistically significant.

Conclusions

The LA Weight Loss hiring assistance manual and top managers of the company describe a variety of industries and occupations that are good sources of exemplary employees for the job of Counselor. While there is considerable disagreement among the managers as to the qualifications of the prospective employees, and no mention in the hiring manual, all the managers agree that no specific level of educational attainment is required. As to prior work experience, the list of industries and occupations in the manual is not wholly reflected in the testimony of any of the managers. Instead, the managers may discuss a few industries or occupations or simply say that successful applicants must have some sales experience and the ability to service the sale. For the positions of Assistant Manager, Center Manager, and Area Supervisor, an increasing level of supervisory experience is required.

No matter which of these varying requirements are the actual requirements for the Counselor position, it is clear from data from the 2000 Census that large numbers of men possess the required experience. Men are available in all the industries and occupations that were cited. The average proportion of men is 39 percent in both the industry and the occupational data. Men also hold about 60 percent of relevant management positions in the US, so they are also qualified in large numbers for the LA Weight Loss management jobs.

Two different sources of data on hires at LA Weight Loss indicate that as many as 2,000 persons per year were hired as Counselors, Medical Assistants, Assistant Managers, Managers, and Area Supervisors from 1999 through 2004. Men accounted for about two percent of the hires into Counselor and Manager jobs, 2.5 percent of Medical Assistants, and one percent of Area Supervisors. None of the 350 LA Weight Loss centers hired more than a few men from 2002 through early 2005.

An analysis of the applications and resumes of persons hired by LA Weight Loss indicates that about half of the employees did not have any experience in the industries or sales occupations mentioned most often in the company's hiring materials and by the hiring officials as producing effective LA Weight Loss employees. Most of the employees had only sales experience in industries other than weight loss, restaurants (servers), fitness, cosmetics/skin care/fragrances, and the dating industry. Of those who had the specific industry/occupation experience, such experience was fairly evenly divided among weight loss, restaurants (servers), fitness, and cosmetics/skin care/fragrances. Almost no employees had experience in the dating industry.

While LA Weight Loss did not record and maintain the gender of their applicants, I reviewed the names of about 73,000 applicants and determined their sex based on general knowledge of names, a list of 40,000 names that were identified by sex, and phonetic and spelling characteristics of the names. I determined that men accounted for 22 percent of the applicants for Counselor jobs, 13 percent of Medical Assistant applicants, and larger proportions of Assistant Managers (31 percent), Managers (36 percent), and Area Supervisors (35 percent). Overall, 24 percent of the unsuccessful applicants were men.

When I added the hires to the unsuccessful applicants, the proportions of men were slightly lower. Men accounted for 20 percent of all applicants. The proportions for Counselors was 18

percent, with 12 percent of Medical Assistants, 24 percent of Assistant Managers, 30 percent of Managers, and 34 percent of Area Supervisors.

I performed statistical tests to determine if the differences between the applicant rates for men and the number of men hired were statistically significant. In each of the five jobs and overall, men were hired in numbers substantially below those that would have been expected given their applicant rates, and the differences were statistically significant.

A computer file listing reasons for applicants not being hired yielded the conclusion that 70 percent were not hired because they lacked the relevant experience. And additional 8.5 percent were not hired because of Personality/Culture Fit. Overall, about 85 percent of the applicants were rejected by LA Weight loss and the remainder removed themselves from the hiring process. Reasons mentioned for non-hire by several applicants -- frequent job-hopping and gaps in employment -- accounted for less than one percent of the reasons for non-hire.

Another computer file contained information on the specific steps in the hiring process. The file contained a total of more than 23,000 applicants; 19 percent were men. Men were three percent of the persons hired. Slightly over half of the applicants were rejected based on reviews of their applications and resumes alone. Men accounted for 29 percent of this group. Of the group that advanced to pre-screening, eight percent were men. Ten percent of those who were rejected at this stage were men. Men accounted for five percent of the applicants who were interviewed and three percent of the hires. Men and women who removed themselves from the hiring process by saying they were no longer interested or by not responding to telephone or email contacts did so at rates that were about equal to their proportions of the applicants at that point in the hiring process.

Statistical tests yielded the result that men were not hired at the same rate they applied, and were rejected on the basis of their applications or resumes, pre-screened from the applicant pool, and not hired after being interviewed at rates that were higher than those of women, and each of the differences was statistically significant. The differences between men and women who removed themselves from the hiring process were not statistically significant. Thus, men were rejected at statistically higher rates overall and at three points in the hiring process but did not remove themselves from the process at statistically higher rates.

Elvira Sisolak
Elvira Sisolak

May 25, 2006
Date

APPENDIX A
RESUME

ELVIRA R. SISOLAK

WORK
EXPERIENCE

SENIOR ECONOMIST 1978 to Present EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, OFFICE OF GENERAL COUNSEL

Provide guidance and advice to Commission attorneys and senior Commission staff in the appropriate economic and statistical techniques for conducting analyses in employment discrimination cases and in research activities. Prepare expert analysis for presentation in numerous Federal Courts throughout the United States by identifying the information needed to complete the tasks and coordinating the gathering, processing, and evaluation of the required data. Testify in court as an expert for the Commission.

Prepare research reports on difficult and developing economic issues. Provide expert economic advice to EEOC staff, to other Federal Agencies, and to individuals and organizations outside the Federal Government. Review, evaluate, and critique the economic and analytical methodologies and studies developed by Commission staff and personnel from other Federal Agencies.

Develop training modules in fields of economics, statistics, and computer analysis as they relate to employment discrimination, and deliver this training to Commission attorneys, investigators, and personnel of other Federal Agencies.

ECONOMIST 1974 to 1978 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, OFFICE OF RESEARCH

Prepared complex research reports from initial planning through final presentation. Supervised other economists and social scientists preparing less comprehensive and complex reports. Participated in groups determining types of studies to be prepared and staffing requirements needed to complete them. Assisted in the design and planning of EEOC collection of employment data for private and public employers. Assisted in preparing and presenting training to EEOC staff in economic and statistical techniques for the use in analysis of data in employment discrimination cases.

ECONOMIST 1972 to 1974 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, DALLAS, TEXAS

Analyzed the significance of economic trends in the region to determine their impact on HUD's program mission.

INDUSTRIAL ECONOMIST 1971 to 1972 COMMONWEALTH OF PUERTO RICO, ECONOMIC DEVELOPMENT ADMINISTRATION, NEW YORK

Provided written and verbal support to field representatives and executives of EDA on issues related to the economy of Puerto Rico. Primary areas of interest were the availability of human and material resources needed by manufacturers who were considering Puerto Rico as a plant site.

COST AND FINANCE ANALYST 1970 to 1971 GENERAL SERVICES ADMINISTRATION, NEW YORK, NEW YORK

INDUSTRIAL ECONOMIST 1967 to 1970 CENTRAL INTELLIGENCE AGENCY, WASHINGTON, D.C.

EDUCATION

GEORGE WASHINGTON UNIVERSITY
Master of Arts (Economics) - 1972
Additional 6 graduate credit hours in Econometrics - 1978

UNIVERSITY OF MASSACHUSETTS
Bachelor of Arts (Economics) - 1967
Cum Laude with Honors in Economics

I have not authored any publications in the preceding 10 years.

My current annual salary with EEOC is \$118,828. I do not receive anything extra for preparation of expert reports or for deposition or trial testimony.

Deposition and Trial Testimony of Elvira Sisolak in the Four Years Prior to May 25, 2006

EEOC v. Nicholas Markets, Inc., (Civil Action No.: 00-4734(AMW), D. N.J.). Deposition (June 2002 and August 2002). Case settled prior to trial.

EEOC v. Watkins Motor Lines, Inc., (Case No. C-3-02-505, S.D. Oh.). Deposition (January 2004). Pending appeal of Summary Judgment decision.

EEOC v. Heartway Corporation d/b/a York Manor Nursing Center (CIV-003-534-WH, E.D. Ok.). Deposition (May 2004). Trial (August 2004). Appeal pending.

EEOC v. Allstate Insurance Company (Civil Action No. 4:04CV01359 ERW, Eastern District. Mo.). Deposition (January 2006).

APPENDIX B
Documents and Computer Files Reviewed and Letter Patterns for First Names

Documents Reviewed

“Guide to Selecting the Best,” LA Weight Loss Centers, LA-0244994-LA-0245038

2000 Census of Population, US Bureau of the Census, Detailed Occupational Characteristics

Lists of LA Weight Loss Centers: lists of open and closed centers dated 5/27/2005

Depositions: Christiane Burnard (Apr. 1, 2005), Bernard, Elaine Bussoletti (Nov. 19, 2004), Nicola Fryer (Nov. 22, 2005 and Feb. 2, 2006; 30(b)6 on Feb 2, 2006), Lesia Petrizio (Nov. 30, 2004), Karen Siegel (Nov. 10, 2004, Mar. 31, 2005 and Mar. 31, 2005; 30(b)6 on Aug. 28 and Sep. 19, 2002), Eileen Stankunas (Dec. 6, 2004); selected portions of depositions of other LA Weight Loss management employees

Forms titled “New Hire Personnel Information” from selected employee personnel files

Keying instructions for personnel files

Keying instructions for applications

Rules for selecting groups of employees from list of Job_Applied_For (developed by E. Sisolak)

Rules for determining sex of applicants (developed by E. Sisolak)

Computer Files Reviewed

EXCEL file prepared by LA Weight Loss containing payroll data that was titled “LACD0155.A__3” I deleted records prior to 2002, as it was evident that data before that time was incomplete. Based on data from the LA Weight Loss personnel files, there is no reason to believe that the company hired men in higher proportions prior to 2002.

Files containing data keyed from personnel files by a contractor to EEOC

Files containing data keyed from applications and resumes by a contractor to EEOC

Applications/resumes and LA Weight Loss documents related to applicants; personnel files produced by LA Weight Loss

ACCESS files from late 2004 and 2005 received from LA Weight Loss

Numerous other computer files produced by LA Weight Loss in early stages of litigation that were not relied on in this report

Letter Patterns for Gender Identification Based on First Names

For men: d, k, n, o, r, s, t; an, en, im, io, is; eem, ell, ett, iah, mah, son, sten, ston

For women: a, I; ka; eka, ene, ice, ine, lyn; anna, elle, ette, ieta, illam ille, onne, shia

APPENDIX C
Exact Probabilities

Table 11. Unsuccessful Applicants and Hires from the Payroll File

	<u>Fishers Exact Results</u>	<u>Exact Binomial Results</u>
Counselors	2.47×10^{255}	less than 1.0×10^{100}
Medical Assistants	1.44×10^{19}	1.0×10^{21}
Assistant Managers	9.47×10^{115}	less than 1.0×10^{100}
Managers	9.08×10^{161}	less than 1.0×10^{100}
Area Supervisors	4.02×10^9	2.37×10^9
Total	less than 1.0×10^{300}	less than 1.0×10^{100}

Unsuccessful Applicants and Hires from the Personnel Files

	<u>Fishers Exact Results</u>
Counselors	3.87×10^{216}
Medical Assistants	1.46×10^{20}
Assistant Managers	7.33×10^{82}
Managers	3.99×10^{118}
Area Supervisors	4.86×10^{13}
Total	less than 1.0×10^{300}

Table 13. Steps in the Hiring Process

	<u>Fishers Exact Results</u>
Rejected prior to Pre-Screening	less than 1.0×10^{300}
Pre-Screening	1.02×10^{12}
No Longer Interested	.2825
Left Message/No Call Back	.2548
Hired/Not hired	.0111
Total Applied/Hired	2.30×10^{21}